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Protection from Persecution

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Women's Project at Asylum Aid

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"How does a lesbian come out at 13?"

***S. Chelvan* ***

In September 2011, an Immigration Judge addressed this question to the representative of a lesbian appellant from Pakistan, highlighting her disbelief of the appellant, despite the appeal being ready to proceed.[1] It is astounding that there are still those who need educating in the simple facts that the *differences* between straight, as compared to lesbian, gay and bisexual appellants, are in fact found in the experiences of *all* human beings. This is particularly shocking after the training provided to Immigration Judges by STONEWALL earlier this year following *HJ (Iran) and HT (Cameroon),*[2] which repeated the mantra to the judges, "*It is not what we do, but who we are*". Would anyone ever ask "*How does a teenager come out as straight at 13?".* In the hetero-normative society we live in, there are still those who assume that every child is programmed as straight as this is 'normal', ignoring the core development of a sexual and gender identity, straight, bisexual, gay, lesbian, trans or intersex, based on identity (including desire and love), and not merely conduct, in *all* human beings.

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[1] Anecdotal evidence of lay party to the appeal conveyed to the author on the day of the adjourned hearing, confirmed by solicitor for the appellant who is aware of use of the account for this article.

[2] *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31; [2011] 1 AC 596. For analysis of judgment see S. Chelvan, *"Put Your Hands Up (If You Feel Love)"*, *Journal of Immigration, Asylum and Nationality Law* 25(1), 56-66. See also James Hathaway and Jason Pobjoy, *"Queer cases make bad law"* (forthcoming, January 2012, *New York University Journal of Law and Politics* 44(2)).

The rejection of a straight life

Following guidance and training since the UK Supreme Court's July 2010 landmark ruling in *HJ (Iran) and HT (Cameroon)*[3] there are decision-makers who engage with detailed analysis of such claims, and who would reject as highly unacceptable and legally flawed decisions which are based on personal ignorance, or in some instances blatant homophobic bigotry. For example, in July 2011, the Upper Tribunal reversed the dismissed appeal of a gay man from Uzbekistan, finding the adverse credibility findings as perverse. The deeply flawed approach of the Immigration Judge in the initial appeal included the question *"When did you first engage in buggery with your boyfriend?*" clarifying that the reference to '*buggery'* was perfectly acceptable.[4] The invisibility of lesbians, bisexual women, trans and intersex women, has until recently reflected the blatant ignorance of asylum decision-makers. The recent Upper Tribunal country guidance case on Jamaican lesbians,[5] shows a much welcomed engagement with the core issues of difference, stigma, shame and harm ('DSSH')[6] which are at the core of the narrative of the majority of LGBTI claims. *SW* importantly identifies risk categories to those who are, or those who are perceived as lesbian in Jamaica, where an individual does not live a 'heterosexual narrative' (i.e. have men 'calling' or have a boyfriend/husband and/or have children). Six years since the Tribunal concluded that the finding "there is some force that perception is key" was non-binding,[7] the Tribunal has finally applied this to the core trigger of "difference".

Correcting a Historical Wrong

This article explores how the development of case law in the past twelve years shows a significant attempt by the UK to identify what is at the core of asylum claims made by lesbians.[8] There is a need to recognise that it is the failure to abide by the "heterosexual narrative" which creates the "difference" with heterosexual individuals. This difference is linked to stigma and results in asylum seekers' shame and a continuing fear of harm in their home country. This understanding is at the heart of identifying the protection needs of women in sexual and gender identity asylum claims.

It was the case of two women who feared domestic violence at the hands of their husbands in Pakistan[9] in 1999, which established that "homosexuals" could be considered a particular social group in addition to women. Lord Steyn recognised an international consensus based on prosecution, or the potential prosecution, of predominantly male same-sex conduct. This landmark judgment reflects that the Refugee Convention is a living instrument and should be interpreted as such. Ironically and shamefully, this corrected the historical wrong which hid the fact that 'homosexuals' were also part of the persecuted in Nazi Germany: in ignoring such facts, the framers of the Convention created a protection gap in the UK of nearly fifty years.[10]

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[3] See Women's Asylum News, Issue 93, July 2010, pp. 5-7, http://www.asylumaid.org.uk/data/files/publications/138/WAN_July_2010.pdf.
[4] Unreported determination of the Upper Tribunal (IAC) (hearing on 12th July 2011).
[5] *SW (lesbians – HJ and HT applied) Jamaica CG* [2011] UKUT 000251 (IAC), 24th of June 2011.
[6] The author has personally constructed this learning tool for both litigation and training purposes used in various arenas including UKLGIG asylum support meetings, an ELENA Course on Vulnerable People (April 2011), UNHCR NGO Meeting (Geneva, June 2011),UNHCR/ECRE/IARJ informal meeting of experts (September 2011, Bled, Slovenia, training slides now used internally by UNHCR) and before the European Parliament (Brussels, 20th October 2011, Civil Liberties, Justice and Home Affairs Committee). It is the self-identification of difference with the consequent recognition of stigma, which attaches shame and fears harm which are the core four triggers in the majority (but not all) LGBTI asylum claims.
[7] *DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG* [2005] UKAIT 00168, §. 71.
[8] Due to the word limit to this article the author has to focus on lesbian claims. Forthcoming paper on the application of the rejection of hetero-normativity in claims from gay and bisexual men will be presented by the author on the 18th of January 2012 at the University of Middlesex conference *The Marginalised Man*. Paper entitled: *"I want to wear pink!" – an analysis of the rejection of hetero-normativity in the narratives of gay and bisexual male asylum seekers in the United Kingdom."*
[9] *Islam v Secretary of State for the Home Department* and *R v IAT ex parte Shah* [1999] 2 A.C. 629; [1999] 2 WLR 1015
[10] The first country to recognize sexual orientation as a persecution ground was the Netherlands, in *Afdeling rechtspraak van de Raad van State* (Judicial Division of the Council of State) 13 August 1981, *Rechtspraak Vreemdelingenrecht* 1981, 5, *Gids Vreemdelingenrecht (oud)* D12-51 (Source: *Fleeing Homophobia: Asylum Claims related to sexual orientation and gender identity* Sabine Jansen and Thomas Spijkerboer (September 2011, fn. 36, p. 19)

This fixation with criminalisation of male same-sex conduct was carried through by the Court of Appeal.[11] Lord Justice Schiemann importantly recognised that criminalisation of consensual adult homosexual conduct in private "*is not regarded by the international community at large as acceptable".* In 2011, 76 countries criminalise same-sex conduct, which includes 5 nations who prescribe the death penalty,[12] and 42 that specifically prohibit lesbian conduct in their legislation.[13] Nevertheless, it is remarkable that from 1999 to 2005,[14] there were no reported cases on sexual or gender identity by women asylum seekers.[15]

NR (Jamaica) - a case study in ignorance and unfairness

The case of *NR* highlights successive procedural and institutional ignorance, prior to her eventual grant of refugee status at appeal.[16] Her past narrative of being a victim of gang rape in Jamaica at thirteen was not accepted as credible. Her criminal conviction in the UK as a young woman for drug supply was accompanied by a life of vice and prostitution but she had no sexual interaction directly with men. Her narrative was that following her rape, she had no sexual interest in men, and found solace from the age of sixteen in sexual and loving relationships with women, which resulted in a developing self-identified lesbian identity. Despite accepting that she did not constitute a continued risk to the public, the Tribunal at her appeal did not accept she was a lesbian because of a reference in a Pre-sentence report to her having a 'boyfriend'. The Tribunal considered she was not a lesbian even though the evidence included letters from *NR's* girlfriend, which graphically described her carnal desires and emotional feelings towards her. Importantly, the Presenting Officer alluded to an assertion that *NR* was 'just going through a phase'. NR was granted an order for reconsideration because the Tribunal's reasoning on sexual identity was perverse. On reconsideration, the Upper Tribunal could not come to an agreement despite the Presenting Officer accepting that NR was a lesbian on the basis of the graphic love letters. *NR* had then to prepare for a third fact-finding Tribunal which did not doubt her girlfriend's love for her, but constructed her profile as someone who had manipulated her whilst in prison where *NR* had 'no choice' but celibacy and her same-sex conduct was but a continuation of her teenage experimentation. Crucially the Tribunal, having rejected her claim to be a lesbian, did not make a finding on what risk she would face as a woman engaging in same-sex relationships.

In July 2009, *NR's* appeal hearing before the Court of Appeal resulted in national media attention.[17] Focussing on her criminal profile, media reports were outraged at *NR's* affront to UK's asylum procedures as a convicted criminal, and argued that the appellate process was a waste of public

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<<http://www.rechten.vu.nl/nl/onderzoek/conferenties-en-projecten/conference-fleeing-homophobia/index.asp>> (last accessed 16th October 2011).

[11] *Jain v Secretary of State for the Home Department* [2000] Imm. A.R. 76.

[12] Yemen, Saudi Arabia, Sudan, Mauritania and Parts of Somalia and the Northern states in Nigeria also prescribe the death penalty. See *State-sponsored homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults* (Bruce-Jones and Itaborahy, ILGA, May 2011) <<http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2011.pdf>> (last accessed 16th October 2011). The newly independent state of Southern Sudan is expected to introduce the death penalty in the imminent future. Uganda, has recently decided to drop the death penalty from a reintroduced Anti-Homosexuality Bill.

[13] The arrest and subsequent persecution of lesbians on the basis of legislation which proscribes (male) same-sex conduct has been recognised by the UK Administrative Court (see *R (on the application of SB (Uganda) v Secretary of State for the Home Department* [2010] EWHC 338 (Admin) (February 2010)).

[14] *LK (AA applied) Zimbabwe* [2005] UKAIT 00159 (no material error in law in Adjudicator's finding that lesbian appellant would be at real risk on return), compare and contrast with earlier Immigration Appeal Tribunal appeal constantly relied on by the SSHD in refusal letters and at appeals - *JD (homosexuals – MDC supporter – internal relocation) Zimbabwe* [2004] UKIAT 00259. In 2011 the Upper Tribunal is expected to hear a Country Guidance case in North Shields on the real risk to gay men and lesbians from Zimbabwe.

[15] The reference relates to reported case law.

[16] *NR (Jamaica) v Secretary of State for the Home Department* [2009] EWCA Civ 856; [2010] INLR 169.

[17] See *Lesbian Jamaican drug dealer fights deportation*, The Daily Telegraph, 15th July 2009, <http://www.telegraph.co.uk/news/newstopics/howaboutthat/5831764/Lesbian-Jamaican-drug-dealer-fights-deportation.html> (last accessed 16th October 2011), *You can't deport me, I'm a lesbian: Jamaican drug dealer makes human rights plea,* Paul Sims, The Daily Mail, 15th July 2009 <http://www.dailymail.co.uk/news/article-1199668/Lesbian-drug-dealers-human-rights-violated-deported-home-Jamaica.html> (last accessed 16th October 2011).

funding. The Secretary of State submitted that *NR* was using lesbianism in an attempt to stay in the UK. In the judgment, Goldring LJ pointed out the obvious:

> *"Even taking into account that the Tribunal saw and heard the appellant, it seems to me its analysis is not without difficulty. A great deal of weight appears to have been placed on what was said very shortly in two reports. The appellant has now been in a series of exclusively lesbian sexual relationships over some 4 years. That is on its face cogent evidence that she is a lesbian, or predominantly a lesbian, by sexual identity. What might have begun as sexual experimentation with lesbianism could have ended with it being her sole or predominant sexual orientation. That does not appear to have been adequately considered or, at least, explained by the Tribunal. It is of course her sexual orientation at the time of the hearing which is important."*[18]

The fourth fact-finding Upper Tribunal held unanimously that even with the historical reference in the Pre-sentence report to a boyfriend, in 2010 *NR* presented as 'exclusively lesbian'. The Tribunal thus concluded that she would be identified as a lesbian and be at risk on return because of her inability to portray a profile conforming to a heterosexual narrative (i.e. by having a boyfriend or children).

Another decision by the Court of Appeal has established that even where sexual identity is not challenged, the appellant will still have to 'prove' that she is a lesbian.[19]

Discrimination and not Persecution

In 2009, the Tribunal could only identify in the country background evidence one incident of harm to a lesbian in Albania.[20] The general conclusion was that discretion of Albanian lesbians was due to family, social pressure, or discrimination and not due to a risk of persecution. This determination highlights the importance of accurate country background evidence. In particular in the case of lesbians, where there is an absence of evidence relating to risk because of their general invisibility in a patriarchal society. This was also detrimental in the appeal of Amare,[21] where the 2005 Court of Appeal held that it was discrimination, and not persecution, which was at the core of the narrative of a lesbian from Ethiopia.

In *AK (Iran)*[22] the 2008 Court of Appeal remitted for re-hearing country evidence on risk to a trans woman from Iran, correcting the mistake in *Rahimi* where it was held that risks to trans women in Iran did not exist due to the availability of surgical provision.[23] However, the Court of Appeal continued to incorrectly use a male-pronoun to a self-identified trans woman, highlighting the urgent need for a reported guidance case on gender identity asylum claims.[24] Whilst UKBA is to be congratulated on the recent Asylum Instruction on *Gender identity issues in the asylum claim*, there still needs to be clear unambiguous guidance from the Tribunal or a higher court.[25]

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[18] § 24.
[19] *LS (Uzbekistan) v Secretary of State for the Home Department* [2009] EWCA Civ 909.
[20] *MK (Lesbians) Albania CG* [2009] UKAIT 00036 (9th September 2009) [see § 340 to 342]. It is understood that the Appellant is currently seeking leave to appeal to the Court of Appeal.
[21] *Amare v Secretary of State for the Home Department* [2005] EWCA Civ 1600; [2006] Imm A.R. 217. Approach of Laws LJ affirmed in *OO (Sudan) and JM (Uganda) v Secretary of State for the Home Department* [2009] EWCA Civ 1432; [2010] All ER (D) 17 (Jun).
[22] *Rahimi v Secretary of State for the Home Department* [2006] EWCA Civ 267.
[23] *AK (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 941. *AK (Iran)* and *Rahimi* are the only reported cases on gender identity asylum claims.
[24] *AK (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 941.
[25] See UK Border Agency Asylum Instruction on *Gender Identity issues in the asylum claim*, 13th June 2011, http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary <<last accessed 16th October 2011>>. See for a similar instruction on sexual identity: UK Border Agency, *Sexual Orientation issues in the asylum claim* (6th October 2010, revised on 13 June 2011).

SW (Jamaica)–at last a breakthrough!

In *SW (Jamaica)* in June 2011, the Upper Tribunal finally engaged with the simple fact arising out of sexual or gender identity asylum claims: it is the rejection and/or inability to conform to the heterosexual narrative which identifies difference with the hetero-normative norm and which leads to the real risk of curative rape and even murder.[26] The case set out that women from Jamaica are expected to be sexually active at a young age, and would be expected to have children. If women are not identified as living with a man, they would be expected to be receptive to men 'calling', seeking sexual relations with them. This is what is termed the 'heterosexual narrative' for women in Jamaica.

The Secretary of State's position, having conceded general risks to lesbians who are 'open', was that *SW* would not be able to find any 'open' lesbians in Jamaica to have a relationship with, so she would be discrete, and this would be 'reasonably tolerable'.[27] *SW* presented as an 'out' lesbian, who had been on Gay Pride marches, dated the head of UK Black Pride, was 'open' about her relationship with her girlfriend. She is educated and articulate. The Tribunal by its findings in effect accepted that *SW* would therefore be within the exclusive group of 'gay martyrs'.[28] Consequently, she would not be discrete, and would face the conceded real risk of curative rape and even murder. There was therefore no need to examine whether she would be voluntary discrete on return to Jamaica.

The Upper Tribunal importantly recognised that women not living a heterosexual narrative could be perceived as lesbian and therefore be at risk. This then addresses the lacuna in Lord Rodger's guidelines as even those who are voluntary discrete for family or social reasons alone, who would not be refugees pursuant to *HJ/HT* are arguably still refugees due to their inability (be it voluntarily or not) to live a straight life. It is the rejection of hetero-normativity which leads to identification and consequent risk pursuant to the 'DSSH' model described earlier.

The future?

What has now occurred is a shift of the focus to 'proving' sexual or gender identity. As Asylum Aid's 2011 report highlighted, there exists a "*high threshold to meet for applicants to convince case owners of their sexual identity, even though the law only requires that to be established to the level of reasonable degree of likelihood*".[29] This is reflected in one of the recommendations contained in the September 2011 *Fleeing Homophobia* report, which elevates 'self-identification' as the single evidential requirement.[30]

Returning to the rhetorical question posed by the Immigration Judge, *"how does a lesbian come out at 13?"* Any answer can only be given following education, experience and empowerment for without such core triggers women seeking asylum based on sexual or gender identity will continue to be invisible, resulting in ignorance and fear.

Women's Asylum News would like to thank Chelvan for writing this article.

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[26] For a comprehensive summary and case analysis of SW (Jamaica) see Women's Asylum News, Issue 103, July 2011, pp. 6-8, http://www.asylumaid.org.uk/data/files/publications/167/WAN_July_2011.pdf. See *'Jamaican lesbian can stay in UK, tribunal rules'* BBC News 6 July 2011, <<http://www.bbc.co.uk/news/uk-england-stoke-staffordshire-14047505>> and '*Immigration judges grant Jamaican lesbian UK residency'* Pink News, 6 July 2011 <<http://news.pinkpaper.com/NewsStory/5663/6/07/2011/immigration-judges-grant-jamaican-lesbian-uk-residency.aspx >> (last accessed 16th October 2011).

[27] This was the legal test at the time of the hearing in December 2009 pursuant to *J v Secretary of State for the Home Department* [2006] EWCA Civ 1238; [2007] Imm AR 73 [§ 16].

[28] *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31; [2011] 1 AC 596, para. 53.

[29] See *Unsustainable: the quality of initial decision-making in women's asylum claims* (Asylum Aid: January 2011), p. 191. See also Jenni Millbank, *From discretion to disbelief: recent trends in refugee determinations on the basis of sexual orientation in Australia and the United Kingdom*, The International Journal of Human Rights, Vol. 13, Nos 2-3, April-June 2009, 391-414

[30] See Recommendation No 5, *Fleeing Homophobia: Asylum Claims related to sexual orientation and gender identity*, Sabine Jansen and Thomas Spijkerboer (September 2011) p. 11. <<http://www.rechten.vu.nl/nl/onderzoek/conferenties-en-projecten/conference-fleeing-homophobia/index.asp>> (last accessed 16th October 2011).

Legal Issues

Spouses on discretionary leave cannot claim an entitlement to indefinite leave to remain under the domestic violence rule

Guzman-Barrios (domestic violence-DLR- Article 14 ECHR) Colombia [2011] UKUT 352 (IAC) (09 September 2011)[31]

The Appellant in this case was a 49 year old Colombian national who had been granted three years' discretionary leave to remain on the basis of his marriage to a woman settled in the United Kingdom. The Appellant was not granted two years leave to remain as a spouse under the Immigration Rules because he did not have leave to remain at the time of his application. When the marriage broke down due to domestic violence he applied for Indefinite Leave to Remain (ILR)[32] before his existing leave expired although the application was made on the wrong form. He later resubmitted the application on the correct form. When the UK Border Agency (UKBA) refused his application he was not given a right of appeal as it was considered the application had been made only after his leave had expired.

The Appellant submitted an appeal in any case and the immigration judge of the First-tier Tribunal concluded that the appeal would be considered because the initial application was not invalid despite being submitted on the wrong form. At appeal before the First-tier Tribunal, the immigration judge accepted that his marriage had broken down permanently because of domestic violence on the part of his wife. The Appellant argued that it was discriminatory for the domestic violence rule for spouses not to apply to persons with discretionary leave to remain under the right to private and family life[33] and the prohibition of discrimination clause[34] in the European Convention on Human Rights (ECHR). The immigration judge of the First-tier Tribunal dismissed the appeal as he rejected the Appellant's argument regarding non-discrimination and considered that the Appellant had lived most of his life in Colombia, his immigration status had been regularised on the basis of a marriage which had now broken down and although the decision to remove him would interfere with his private life it was not disproportionate to expect him to return to Colombia.

The Appellant was granted permission to appeal to the Upper-tier Tribunal on renewal. The Appellant's representative relied on a number of domestic and ECtHR cases to support his analogy that a person in exactly the same position as a spouse on a two-year "probationary" visa save that he had a different immigration status was discriminated against on the basis of "other status" under Article 14 ECHR considered in conjunction with his right to private and family life if he could not rely on the domestic violence rule. The Upper-tier judge, however, concluded that there was no unlawful discrimination in this case because "it is in the very nature of legitimate immigration control" that non UK nationals who meet the requirements for leave to enter and remain under the Immigration Rules are treated more favourably than those who do not. Immigration control would be redundant if this was not the case and therefore this does not constitute unlawful discrimination. His appeal was thus dismissed, with the judge holding that "discretionary leave simply does not confer all the benefits of leave under the Rules".

The immigration judge clarified that if an Appellant's marriage breaks down because of domestic violence this is "a relevant factor in assessing the strength of his private life ties to the United Kingdom" in an Article 8 appeal, although it will not necessarily lead to the appeal being allowed.

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[31] http://www.bailii.org/uk/cases/UKUT/IAC/2011/00352_ukut_iac_2011_ya-gb_colombia.html
[32] Immigration Rule 289A.
[33] Article 8 ECHR.
[34] Article 14 ECHR states that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

"Young Congolese women who have participated in prostitution" are members of a particular social group, according to US Immigration Court

Immigration Court, Chicago, Illinois, Asylum Only Proceedings, 9 August 2011[35]

The Respondent[36] in this case was a 23 year old woman from the Democratic Republic of the Congo (DRC) who had been trafficked to Belgium for sexual exploitation and had then fled to Paris and from there to the USA where she claimed asylum. The Respondent claimed that she had been the victim of past persecution in the DRC on account of her membership of a particular social group: young Congolese women who have engaged in prostitution. She also suggested two other definitions of a particular social group: Congolese women who have escaped prostitution after being trafficked and failed asylum seekers returned to the DRC. Under the legislation in place in the USA, she also argued that she was eligible for humanitarian protection due to the severity of her past persecution and that it would be likely she would suffer "other serious harm" if returned to DRC.

The Respondent was born in Kinshasa, DRC, in 1988. When her parents passed away in a car accident, she went to live with a friend of her mother. When the friend of her mother asked her to pay rent she started working as a prostitute to support herself. After a few months, a Russian client of hers suggested she work for him which she agreed and started seeing clients at his house. The Russian man then took her to Brussels promising her she could change her life in Europe. He provided her with a false passport and they flew to Brussels via the Central African Republic. He took her to a house where three other young girls were also locked up. The man started treating her like his slave and tattooed his name on her back. She was expected to continue having sexual intercourse with clients and her trafficker kept all her money. Eventually the women managed to escape and the Respondent arrived in the USA through Paris. When she claimed asylum, she explained that she feared returning to the DRC because of her past experiences as a prostitute, she would be unable to find a job and would be targeted from sex traffickers again; she feared that her trafficker would find her and harm her in revenge for having escaped and stolen his money and she feared being punished by the Congolese government for having sought asylum in the USA.

The Court accepted the Respondent's overall credibility despite the lack of corroborative evidence regarding the central elements of her claim: that she was trafficked from the DRC to Belgium, forced into prostitution and abused. This was because of the Appellant's "relative isolation and lack of connections in the DRC and Belgium, the underground, criminal nature of the respondent's claimed persecutors, and the speed with which she claims to have made her escape, the Court cannot find that it would have been reasonable under the circumstances for the respondent to have provided further corroborative evidence".

In the USA "an applicant who has established that she was persecuted in the past is presumed to have a well-founded fear of future persecution on the same basis". The Court accepted that the Appellant was a victim of "severe form" of sex trafficking under the definition of trafficking in US legislation and concluded that "the experience of being trafficked for sex constitutes harm rising to the level of persecution". As regards the interpretation of the Convention ground of particular social group, the Court noted that there are two correct ways in which to identify a particular social group by referring to the UNHCR Guidelines on particular social group, namely the immutable characteristic approach and the social perception approach. More specifically, the Court stated that "the first, or 'internal' criterion, depends on whether the members share an immutable or fundamental characteristic. In contrast, the 'external' criterion depends on whether other members of the alien's

[35] http://dl.dropbox.com/u/27924754/NIJC%20Redacted%20Asylum%20Decision%20Chicago%20IJ%208-9-11.pdf. Note that US Immigration Courts have no precedential value.
[36] Whilst the Respondent filed an affirmative application for asylum with the Department of Homeland Security, her case was referred to the Immigration Court at Chicago because it has exclusive jurisdiction over asylum applications filed by Visa Waiver Programme applicants under the Code of Federal Regulations (8 C.F.R. § 1208.2(c)(l)(iii)).

society would recognize the members as part of a distinct group. The external criterion does not require that *all members of society* view the group as distinct, but at least the group's persecutors must". Applying these definitions to the Respondent's case, the Court found that her particular social group is based on her age, her gender, and her past experience of having worked as a prostitute: all of which are immutable characteristics. The Court relied on previous case law from the Seventh Circuit Court of Appeals which recognized particular social groups based on shared past circumstances, including former gang members, former members of the Mungiki sect and former prosecutors. Thus the Court noted that "the Respondent's claimed social group is defined in large part by her former profession, and it is logical that former members of the same profession (particularly when the profession is as stigmatized and fulfills as particular a function as prostitution) would be perceived as a distinct group by members of any society". The Court thus accepted that the Respondent belongs to the particular social group of "young Congolese women who have participated in prostitution".

On the basis of expert evidence provided at the hearing the Court stated that there is a strong indication that the "government of the DRC is generally unwilling or unable to control sex traffickers". The Court noted that the DRC is a "weak state with an extremely poor human rights record" and that "corruption is rampant". The US State Department also recently designated the DRC as a "Tier 3" trafficking country "meaning that its government does not comply with minimum standards and is not making significant efforts to do so". Thus, the Court concluded that the DRC was unwilling or unable to protect her from being trafficked in the past.

In the USA, once an asylum seeker demonstrates that s/he has been persecuted in the past on account of one of the Convention grounds, there is a rebuttable presumption that the person's life or freedom will be threatened if returned to his/her home country. The government can rebut the presumption if there has been a fundamental change in circumstances in the country of return such that the asylum seeker no longer has a well-founded fear of persecution on account of one of the Convention grounds or that it is reasonable to expect the asylum seeker to relocate internally. In this case, the government presented no evidence for either. Indeed, the Court accepted the evidence that "sex trafficking remains a very serious problem in the DRC and that the Congolese government is completely ineffective in investigating and prosecuting it. The same evidence also indicates that conditions are equally bad or worse throughout the country. Moreover, in the Court's view, it would not be reasonable to expect a respondent with no family or connections in other parts of the DRC to relocate under the circumstances". As the government failed to rebut the presumption in the present case, the Court concluded that the Respondent had a well-founded fear of persecution on the basis of her membership of a particular social group.

With regards the Respondent's other claims, the Court found it very likely that she would suffer serious harm if returned to DRC. This was based on the Seventh Circuit Court of Appeals case law that "lack of access to mental health care for an individual with mental problems and few financial resources could constitute "other serious harm" within the meaning of the regulation". The Respondent in this case had been diagnosed with Depressive Disorder and Anxiety Disorder and a psychiatrist had "determined that it would be "highly detrimental" for her to return to the DRC because she has no family members who could provide her with emotional or financial support and returning her to the DRC would force her to relive her traumatic experiences, which would be very damaging, especially if she were not able to obtain mental health care".

The immigration judge thus ordered that the Respondent's application for asylum be granted.

Minimum age of 21 for spouse visa disproportionate under Article 8 ECHR

Quila & Anor, R (on the application of) v Secretary of State for the Home Department [2011] UKSC 45 (12 October 2011)[37]

This was an appeal by the Secretary of State for the Home Department (SSHD) against the decision of the Court of Appeal that the Immigration Rule according to which applicants for a spouse visa must (absent exceptional compassionate circumstances[38]) be at least 21 years old was a disproportionate means of discouraging forced marriage under the right to private and family life (Article 8 ECHR).[39]

The SSHD tried to rely on the case of *Abdulaziz* before the European Court of Human Rights where it was found that refusing entry clearance to the husbands of three women living in the UK did not engage their right to private and family life. The Supreme Court declined to follow this case on the basis that it was an old decision, there was dissent from it even at the time, and it had since been superseded by more recent decisions inconsistent with it. In *Adbdulaziz* the European Court had been influenced by the fact that the decision to grant entry clearance was a positive obligation on the State. However, more recent jurisprudence from the Court has recognized that the distinction between positive and negative obligations on the State which is often blurred should not result in a different outcome. Thus, the Supreme Court decided that in the present case the Immigration Rule setting the minimum age for the grant of a spouse visa at 21 is an interference with the right to private and family life. The only question remaining was whether the interference could be justified.

The Court considered whether the rule had a legitimate aim, namely to protect those who might otherwise be forced into marriage, and whether the rule was "in accordance with the law" and "necessary in a democratic society". It noted that the SSHD had failed to demonstrate that when she introduced the rule that would set the minimum age for a spouse visa application at 21, "she had robust evidence of any substantial deterrent effect of the amendment upon *forced* marriages". Lord Wilson thus concluded that the rule is rationally connected with the objective of deterring forced marriages. "But the number of forced marriages which it deters is highly debatable. What seems clear is that the number of unforced marriages which it obstructs from their intended development for up to three years vastly exceeds the number of forced marriages which it deters". Lady Hale agreeing with Lord Wilson noted that "it is entirely unclear whether the rule does have the desired effect upon the marriages which it is designed to prevent or deter" and relied on the fact that "there is also evidence that the desire to obtain a visa is not the predominant motive for forcing a child into marriage". Lady Hale also pointed out that "if the rule is not effective in preventing a forced marriage it may do a great deal more harm than good". She highlighted that the SSHD had failed to gather the necessary evidence before bringing in the change to the immigration rule to confirm that it would act as a deterrent to forced marriages. Thus, "none of [the evidence] amounts to a sufficient case to conclude that the good done to the few can justify the harm done to the many, especially when there are so many other means available to achieve the desired result". Lady Hale concluded that the rule was an interference with the right to marry under the European Convention on Human Rights[40] which is not a qualified right such as the right to private and family life.

The SSHD had failed to prove that the rule was no more than necessary to accomplish the objective of deterring forced marriages or that it struck a fair balance between the rights of those who wanted to marry of their own will and the interests of the community in preventing forced marriages. Overall, the SSHD had not been able to show that the interference with Article 8 ECHR is justified and although the present case was solely concerned with the infringement of Quila and Bibi's rights, Lady Hale and Lord Wilson both agreed that it was difficult to see any case where Article 8 ECHR would not be infringed when the immigration rule was applied to an unenforced marriage.

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[37] http://www.bailii.org/uk/cases/UKSC/2011/45.html.
[38] Paragraph 277 of the Immigration Rules.
[39] For more information about the case before the Court of Appeal, see Women's Asylum News, Issue 98, December 2010-January 2011, pp. 4-5, http://www.asylumaid.org.uk/data/files/publications/153/WAN_Dec_Jan.pdf.
[40] Article 12 ECHR.

In a dissenting judgment, Lord Brown indicated he would have allowed the SSHD's appeal because he considered that the evidence provided to the Court and in particular the May 2011 report of the House of Commons Home Affairs Committee on Forced Marriage which was not available to the Court of Appeal at the time of its decision favoured the rule. He noted that the questions regarding the impact of the Immigration Rule on the deterrence of forced marriage can never be satisfactorily answered because the true extent of forced marriage cannot be specifically ascertained due to the hidden nature of this phenomenon. He also referred to provisions of EU law which allow states to set the minimum age for spouse entry clearance to 21[41] and the fact that several European states had similar provisions.

Failure to re-instate residence status of a foreign national abroad was a breach of Article 8 ECHR

***Osman v Denmark*, 38058/09 [2011] ECHR 926 (14 June 2011)[42]**

This note dated 16 June 2011 is reproduced here with kind permission from the AIRE Centre (Advice on Individual Rights in Europe)[43]

In the *Osman* case, the European Court of Human Rights found a violation of Article 8 of the European Convention on Human Rights (right to respect for private and family life) due to the Danish authorities' failure to re-instate the residence status of a foreign national who, after living in Denmark for over seven years, was taken abroad by a parent for two and a half years.

The judgment is relevant for:

- Article 8 immigration cases concerning the reunification of children with their parents, and particularly entry clearance cases; and
- Cases involving victims (or potential victims) of human trafficking.

Facts

The case concerned a Somali national who had been living lawfully in Denmark from the age of seven and who was expelled from various schools. At the age of fifteen, she was taken by her father to Kenya for what she (and her mother) thought would be a short stay with her paternal grandmother. Instead, her father left her in the Hagadera refugee camp for over two years, where she provided round-the-clock care to her very ill grandmother. When other relatives arrived, she then left the camp and tried to apply for a new entry visa to return to her mother and siblings in Denmark, but was refused: under Danish law, her residence permit had lapsed, and in the meantime Danish immigration law had changed and she was now too old to be eligible for a new entry visa.

The applicant subsequently returned to Denmark clandestinely, where she has been living with her mother and siblings, but without residence status. She unsuccessfully appealed the authorities' refusal to re-instate her residence status.

Violation of Article 8

The Court found that this refusal engaged the applicant's right to respect for private life and family life. The Court concluded that the refusal violated Article 8 because it was 'not necessary in a democratic society', i.e. not proportionate to the aim of immigration control. The Court found that '*for a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in a host*

[41] Article 4(5) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
[42] http://www.bailii.org/eu/cases/ECHR/2011/926.html.
[43] http://www.airecentre.org.

country, very serious reasons are required to justify expulsion' (§ 65). The Danish authorities had failed to show that such reasons existed in this case. The Danish Government had argued that the refusal was justified because the applicant had been taken out of the country by her father, with her mother's permission, in exercise of their rights of parental responsibility. The Court agreed '*that the exercise of parental rights constitutes a fundamental element of family life*', but concluded that '*in respecting parental rights, the authorities cannot ignore the child's interest including its own right to respect for private and family life*' (§ 74). The Court found in this case that the applicant's interests as a child had not been sufficiently taken into account.

The Court distinguished this case from *Ebrahim and Ebrahim v the Netherlands* (decision of 18 March 2003), which involved a Lebanese boy who entered the Netherlands at the age of 10 as an asylum-seeker. At thirteen, he returned to stay in Lebanon with his grandmother in a refugee camp, but in that case the child had lived in the Netherlands for a much shorter time than the applicant in *Osman* had lived in Denmark, and the child in *Ebrahim* had never enjoyed residence status in the Netherlands.

Although the applicant in *Osman* had clandestinely returned to Denmark, the AIRE Centre thinks that the case applies equally to situations of refused entry clearance where the person concerned is still outside the country. The Court gave no consideration to the fact that the applicant was in Denmark, basing its judgment on previous judgments concerning entry visas or the enforcement of exclusion orders against immigrants who had already been expelled (see, e.g., *Maslov v Austria*, Grand Chamber judgment of 23 June 2008).

Trafficking and Article 4 ECHR

The AIRE Centre had argued that the applicant was a victim of human trafficking, because, as a child, she had been transported to Kenya and exploited there.[44] The AIRE Centre alleged that there had also been a violation of Article 4, which covers human trafficking. The Court did not find that the Danish authorities were required to take into account the allegations of trafficking because they had not been raised by the applicant at any time before the proceedings in Strasbourg. It is unfortunate that the Court did not consider the question of intra-familial human trafficking in the light of Denmark's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings: Article 10 of that Convention places the obligation on the 'competent authorities' of States (including the immigration authorities and the courts) to identify victims of trafficking.

The Court nonetheless does appear to have recognised that the applicant was exploited in Kenya and took this into account in its reasoning relative to Article 8 (see paragraph § 70).

Just Satisfaction

The Court awarded the applicant the full amount she asked for by way of just satisfaction: €15,000 for non-pecuniary damage.

Usefulness in UK Cases

This judgment gives substance to the requirement to consider the 'best interests of the child' in immigration proceedings when the child is the subject of an adverse immigration decision. It also re-enforces the principle, already set out in the Strasbourg case of *Maslov* (cited above) that the rights of the child continue to be relevant to cases involving individuals who are now adults, but who were

[44] Trafficking is defined in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings:
a "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; …
c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
d "Child" shall mean any person under eighteen years of age….

children at some point relevant to the proceedings. It is clear from the Court's judgment that the Danish courts should have taken into account the principles related to the rights of children in the appellate proceedings in Denmark, even though by that time, the applicant was technically no longer a minor (§ 73).

The Court also excused the fact that the applicant and her mother had not been in close contact while the applicant was outside of Denmark by reference to 'practical and economical restraints' (§ 74).

National News

Questions in the House of Lords

Questions regarding the rate of successful appeals by women asylum seekers were raised in the House of Lords on 11th October 2011.[45] Baroness Bakewell asked, in the light of the number of asylum decisions overturned on appeal, in particular among female asylum seekers, what steps the government are taking to ensure that women fleeing gender-based persecution receive fair asylum decisions. Earl Attlee, for the government, assured the house that the UKBA were working with key partners to improve the system in order to ensure claims made by women were dealt with "as fairly and sensitively as possible". Lord Avebury raised concerns over UKBA's refusal to acknowledge gender-based violence as a reason to release someone from the detained fast-track (DFT) despite stating to the High Commissioner for Human Rights at the Council of Europe that the DFT was not used to deal with particularly vulnerable applicants, such as victims of trafficking or sexual violence. He went on to suggest that the success rate of appeals by women against refusal of asylum was indicative of a failing within the UKBA to match the improvements made in other areas of the criminal justice system dealing with gender-based violence.

Baroness Kennedy echoed these comments, arguing that the success rate indicated "poor decision-making and a culture of disbelief at the first instance." She called for an improvement in training at UKBA and for legal representatives to be present when women are first interviewed. Earl Atlee agreed with her first point but raised the difficulty faced by UKBA officers in dealing with applicants who are not comfortable with discussing extremely sensitive experiences. Baroness King of Bow then drew the Minister's attention to Asylum Aid's conclusions (contained in the *Unsustainable* report) that there is a "striking failure" of understanding among UKBA case workers of what these women have been through. She asked the Minister to meet with her and other interested peers to discuss the issue of UKBA gender sensitivity training further. Earl Attlee acknowledged there was room for improvement but also pointed out that often problems experienced by women in their first interviews are resolved by the introduction of new evidence made possible by increased confidence on the part of the applicant or access to better legal advice. He agreed to arrange the meeting Baroness King proposed.

Nigerian mother allegedly assaulted in front of her children on deportation flight

Police are investigating an alleged attack on a failed asylum seeker from Nigeria by six of her eight escorts on a flight bound for Italy from the UK. As well as the severe nature of the attack, the fact that the assault took place in front of the woman's three children, aged 4, 6 and 8 has led to severe criticism from human rights campaigners. The woman, referred to as Faith, claims she was beaten on

[45] House of Lords / 11 Oct 2011 : Column 1524
http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111011-0002.htm#11101177000642.

the arms and legs, had her hand twisted and was grabbed round the throat. The attack left her unable to breathe, spitting blood and terrified her children. After the incident, the pilot insisted on the immediate removal of the family and escorts from the flight. This flight, on 22 September 2011, was the first attempt to deport the family – a second attempt, on 23 September failed when the flight had no seats available. A further attempt was due on 26 September but legal intervention and the granting of an injunction in the high court prevented it and the family were able to return to Birmingham. The court stated this case, like similar recent cases, should wait for a decision in a case pending on the legality of forced removals to Italy. Faith lived there for a decade before claiming asylum in the UK in November 2010 on the basis she was suffering persecution from family members and other community figures. This claim was rejected in January 2011.

Human rights campaigners claim that this case exposes the hypocrisy of the government's claims to have ended the detention of children, and to have made the process more 'compassionate and humane'. The family were taken from Birmingham to the secure pre-deportation facility at Pease Pottage near Crawley in West Sussex at 5.30 am on 19th September 2011. Nick Clegg's promise to end the practice whereby "children are literally taken from their homes without warning and placed behind bars" seems to have in part not been fulfilled, if this case is taken as an example. Emma Ginn, from Medical Justice has called on the government to admit their unfulfilled promise but also to "actually end the detention of children." The Home Office have refused to comment on the case but confirmed that a complaint of serious misconduct was being investigated by both West Sussex police and their own professional standards unit.

To read the full article, see: http://www.guardian.co.uk/uk/2011/oct/03/police-investigate-nigerian-mother-deportation/print.

International News

Ghana: Disband witches' camps now

Human rights activists have called on the Ghanaian government to urgently close the 'witches' camps' currently running in the country, as they are clearly breaching the human rights of the women detained. There are six witches' camps in existence, in the Northern region of Ghana, where women who have been accused of witchcraft are interned and subjected to inhumane treatment. At a recent conference, entitled "Towards Banning "Witches" Camps", a Justice of Ghana's Supreme Court, Justice Rose Owusu strongly condemned the camps. She quoted alarming statistics: more than 1,000 women and 700 children are detained in these camps. She criticised the belief in witchcraft, and its gender bias against women. Where, she wondered, are the 'wizards' camps'? Quoting Article 17(1) of the 1992 Constitution she stated that "abuse of women is a gross violation and infringement of the Constitution. It is illegal for anyone to hide behind false accusations and abuse a woman." The conference, which brought together humans rights activists and other stakeholders looked towards formulating effective collaborative solutions to end the practice of detaining women in this way. While many participants emphasised the need for Parliament to take swift action and disband these camps, a minister called on them to suggest partnership projects which might enable them to more effectively end the practice for good.

To read the full article, see: http://www.modernghana.com/news/350546/1/disband-witches-camps-human-rights-advocates.html.

Indonesia: Experts fear that Indonesian regulation of FGM will lead to its increase

Medical experts and human rights groups have raised grave concerns that the Indonesian government's introduction of regulation for FGM will be seen as an endorsement of the practice. Though it was banned in 2006, guidelines and regulations of the practice were passed in June 2011 by the Ministry of Health. The Ministry says that they represent an effort to further regulate something they know is still being carried out, and thus protect women. Experts fear though that this will instead lead to an increase in medical professionals prepared to carry out the procedure, attracted by the money they can charge. Medical professionals have been found to carry out more extensive cutting of the clitoris than the local healers who traditionally carried out the ceremony. A letter with more than 100 signatories, including Amnesty International, has been sent which calls for the guidelines to be revoked, on the basis that it both infringes Indonesia's child protection laws and Indonesia's commitment to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to Jurnalis Uddin, doctor and lecturer at Yarsi University in Jakarta, research has found that across Indonesia approximately 12 per cent of female babies born in hospitals, birthing centres or assisted by government midwives have been circumcised. This does not, however, account for procedures which take place outside of official venues. Groups across Indonesia are fighting for revocation of these guidelines. Frenia Nababan, spokesperson for the Indonesian Family Planning Association says these guidelines could 'increase control of women's bodies by the state and religious groups.'

To read the full article, see: www.irinnews.org/printreport.aspx?reportid=93628.

Kenya: Somali refugee women facing heightened risks of sexual violence

Women travelling to Kenya's Dadaab camp following conflict in Somalia are increasingly becoming victims of sexual violence. CARE International in July reported that the number of reported cases of sexual and gender-based violence (SGBV) in the camp had increased from 75 between January and June 2010 to 358 during same period in 2011. The risks are worsened by the delays faced by women in registering in the camp, so that they are forced to reside in outposts. These outposts or unplanned refugee settlements, with their insecure and poorly lit living conditions, leave their majority women and child residents particularly vulnerable. They lack the protection mechanisms of the camp such as firewood collection and community patrols, and safe spaces for girls and women, which themselves do not guarantee security.

The International Rescue Committee (IRC) conducted an assessment in July of GBV in Dadaab which found that sexual violence and rape were the prime concern for women and girls fleeing Somalia. This often involved being raped in front of their husbands, sometimes by multiple persons, often at gunpoint, by men described as 'bandits'. Sinead Murray, the GBV programme manager for the IRC said that women often do not report this, for reasons of shame, but that their awareness programmes carried out in the camp are encouraging more women to come forward. She said it was important to aim behaviour-change communications at both men and women in order to reduce incidences of SGBV. Women and girls who do report cases of sexual violence can access medical and psychological support in the camp- the UN Population Fund (UNFPA) provides post-rape kits, HIV tests and counselling, STI and pregnancy screening and psychosocial counselling services to health facilities within the camp, such as the Hagadera Hospital. A very important first step though, is the provision of information on how and where to report cases of SGBV when they register- this can prevent unnecessary injuries, infections and unwanted pregnancies.

To read the full article, see: http://www.irinnews.org/printreport.aspx?reportid=93682.

Libya: Aid workers investigating alleged rape of women in migrant camp

Migrant women living in a squatter settlement outside of Tripoli have alleged that they have been the victims of sexual violence perpetrated by men of unknown identity and affiliation. These claims are being taken seriously by aid workers from Médecins Sans Frontières (MSF) who the women approached when they entered the camp in August. Migrants fled Tripoli during the NATO bombings and many have settled in a port 27km west of Tripoli. This port has now become a mainstay for human traffickers who benefitted when Colonel Gaddafi relaxed controls on immigration, purportedly to punish NATO for its bombing campaign. Hundreds of men and women from African nations such as Nigeria, Chad and Senegal now live in a camp based here. The rapes are alleged to have taken place on the night of August 19 when gunmen entered the camp. Women were then raped at gunpoint. The men are alleged to have shouted anti-Gaddafi slogans but it is not clear exactly to which group these men belonged. MSF claim that armed raids have decreased since they entered the camps but the threat of violence has not been eradicated completely. Consequently MSF are very concerned about making the testimony of these women more public, for fear of reprisals. Some of the women who have spoken to the media anonymously have estimated that 25-30 women have been raped. Aid workers have also affirmed this estimate as matching theirs.

To read the full article, see:
http://english.aljazeera.net/news/africa/2011/08/201182921437789463.html.

New Publications

Unsafe Haven: the security challenges facing Lesbian, Gay, Bisexual & Transgender Asylum Seekers & Refugees in Turkey

Helsinki Citizens' Assembly- Turkey Refugee Advocacy and Support Program & ORAM (Organisation for Refugee Asylum and Migration), Updated Edition June 2011

An update on a report originally published in 2009, Unsafe Haven explores the experiences of LGBT refugees in Turkey. It reports on the difficulties they suffer, the services that are available to them, and makes recommendations to all agencies working with LGBT refugees on how to improve their situation.

Between the publication of the original report and this follow up, the report includes some shocking facts and figures:

- HCA and ORAM have documented five violent physical attacks on LGBT asylum seekers and refugees, two sexual assaults, and multiple accounts of verbal harassment and threats.
- In the two years since the 2009 edition of *Unsafe Haven*: at least forty-five LGBT individuals were murdered in hate-motivated crimes, many of the victims transgender.
- A Turkish minister, the Minister for Women and Social Affairs, referred to homosexuality as a "disease and biological disorder in need of treatment".

The report acknowledges that the UNHCR has made some progress in improving the experiences of LGBT refugees of the asylum process in Turkey, especially in their own interviewing techniques. They have also quickened the process of resettlement, particularly important for the most vulnerable LGBT refugees.

However the report makes some recommendations on how to ensure that LGBT refugees do not continue to suffer in Turkey:

- They call on the police to undergo intensive training in how to protect LGBT refugees.
- LGBT refugees should be sent to less hostile environments while their claims are processed.
- The UNHCR and Turkish government should continue to work towards a fast resettlement process, one which does not expose LGBT refugees to violence further to that suffered in their country of origin. This should involve interviews which do not make the LGBT individuals feel threatened.
- Healthcare, educational and public sector workers should undergo sensitivity training so that they do not discriminate against LGBT refugees or make services inaccessible.
- Finally, all stakeholders should revise their codes of conduct to prohibit discrimination on the basis of sexual orientation and gender identity.

To read the full report, see: http://www.oraminternational.org/images/stories/PDFs/oram-unsafe-haven-2011.pdf.

Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement

United Nations High Commissioner for Refugees, 2011

As part of their Need to Know Guidance series, this paper advises UNHCR staff on best practice when working with LGBTI refugees and asylum seekers. It highlights the parts of the displacement cycle where LGBTI individuals can be most vulnerable and provides specific actions UNHCR offices should follow in order to ensure LGBTI refugees are not discriminated against during the asylum process. It outlines the additional services LGBTI individuals may require.

The advice can be downloaded at: http://www.unhcr.org/refworld/docid/4e6073972.html.

Factsheet 11: Extra asylum support payments for women and children on Section 95 and Section 4 support

Asylum Support Appeals Project, August 2011

This factsheet describes the additional payments available for pregnant women and parents with dependent children who are currently on Section 95 or Section 4 support. These include maternity grants, extra payments during pregnancy and extra payments for children under 3 years. Those on section 4 support are also entitled to clothing payments for children under 16 years and assistance with travel costs.

For more information and advice on how to apply for these extra payments, the factsheet can be found at http://www.asaproject.org/web/images/PDFs/Factsheets_2011/f11.pdf.

UK Training and Events

Conference on "Protecting Human Rights: Sexuality, Gender Identity and Asylum in the UK"

9.30am - 5.30pm, Saturday 29th October, Hong Kong Lecture Theatre, LSE

Organised by **Student Action for Refugees (STAR) Society** based at the LSE in conjunction with the **UK Lesbian and Gay Immigration Group (UKLGIG)** with support from the **LSE Annual Fund**.

This one day conference aims to: highlight situations of persecution from which LGBTI people seek protection; explore how the UK asylum system accounts for the claims of LGBTI individuals; and examine the way these issues have been framed.

There will be key speakers, group workshops and personal testimony themed around issues to do with homelessness, detention, trauma, law, religion and categorisation of sexuality. The conference is open to anyone interested in human rights and civil liberties.

Tickets will be **£10 (£7 Concession)** which includes lunch and refreshments. Please reserve your place soon, by emailing lse.asylum.lgbt@gmail.com to confirm your attendance. For further information, including confirmations of additional speakers and details of workshops see http://www.lsesustar.org.uk/conference2011.html.

Scottish Refugee Council Annual Conference

Raising refugee women's voices

3 November 2011, 9 am to 4.30 pm
Hampden Park, Glasgow, G42 9BA

The focus of the Scottish Refugee Council Annual Conference is asylum seeking and refugee women.

Against the backdrop of the 60th Anniversary of the Refugee Convention, the UK's 7th periodic report to the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) Committee, and the United Nations High Commissioner for Refugees' (UNHCR) global dialogue with refugee women, the conference will provide an opportunity to explore progress on improving the treatment of refugee and asylum seeking women in Scotland and the UK.

Aims

- Provide delegates with updates from key decision makers
- Provide delegates with a forum to feed their views into the process of developing UK asylum policy
- Take stock of the implications for those people working with asylum seekers and refugees
- Highlight the work of Scottish Refugee Council and other organizations working with people seeking asylum and refugees
- Give delegates the opportunity to network with people from a broad range of backgrounds

For more information, see:
http://www.scottishrefugeecouncil.org.uk/news_and_events/events_calendar/1304_scottish_refugee_council_autumn_conference_raising_refugee_women_s_voices.

Charter of rights of women seeking asylum

Endorsements: 284
Google group membership: 149

Charter letter sent to new Chief Executive of UKBA

Charter endorsers have taken the opportunity of a new Chief Executive joining the UK Border Agency (UKBA) this autumn to raise the Charter's concerns about the rights of women seeking asylum.

This idea sprang from discussion initiated by Asylum Aid amongst Charter endorsers and the letter incorporates topics and information supplied by many endorsers. By the time we sent the letter to Rob Whiteman, the new Chief Executive, on 3rd October, the letter was on behalf of 161 organisations. At the same time, the activity undertaken to get sign up for the letter also resulted in many more organisations endorsing the Charter. During the course of this year this figure has increased by over 70 to its current 284. These range from large national organisations to grassroots support groups.

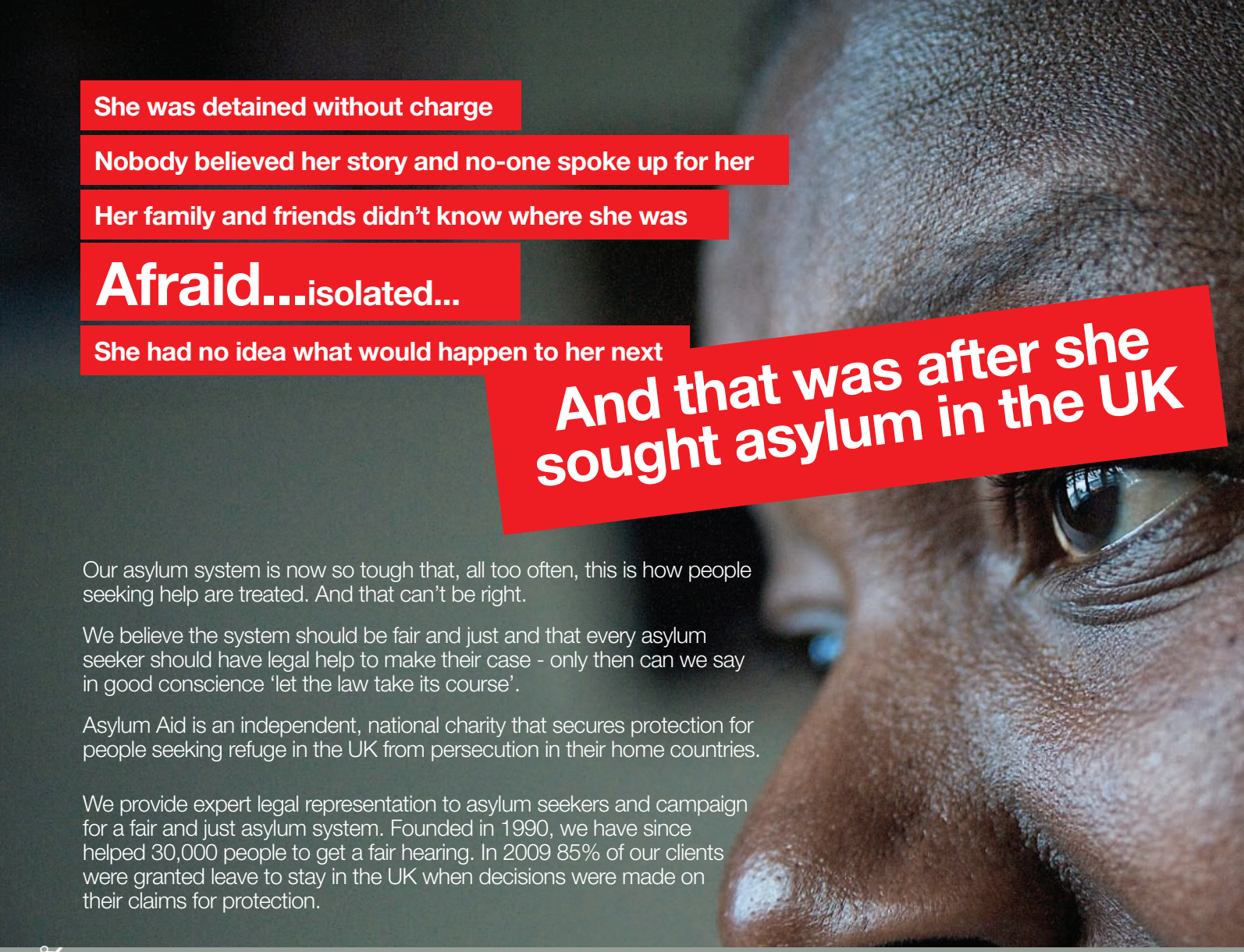
The letter to the Chief Executive provides the national and international context for the rights of women seeking asylum. It details the work undertaken under the auspices of the Charter and the UKBA's progress since it was launched three years ago. Examples are provided of issues effecting women in relation to decision making, support and detention. Concerns are raised that despite some progress, the UKBA is not automatically implementing a gender-sensitive asylum system. The letter welcomes ministerial statements supporting the importance of such a system but states that a change of culture in the Agency is needed to achieve this. In particular, it calls for the UKBA to make gender equality in the asylum process a key strategic priority for the Agency.

The letter is available at
http://www.asylumaid.org.uk/data/files/publications/171/letter_to_new_Chief_Exec_UKBA_Sept_2011.pdf.

We now await a response to this letter which will be circulated to Charter endorsers and WAN readers.

For more information on the Charter and the Every Single Woman campaign, please go to www.asylumaid.org.uk/charter.

If your organisation would like to endorse the charter, please send an email simply stating the name of your organisation to charter@asylumaid.org.uk.



She was detained without charge

Nobody believed her story and no-one spoke up for her

Her family and friends didn't know where she was

Afraid...isolated...

She had no idea what would happen to her next

And that was after she sought asylum in the UK

Our asylum system is now so tough that, all too often, this is how people seeking help are treated. And that can't be right.

We believe the system should be fair and just and that every asylum seeker should have legal help to make their case - only then can we say in good conscience 'let the law take its course'.

Asylum Aid is an independent, national charity that secures protection for people seeking refuge in the UK from persecution in their home countries.

We provide expert legal representation to asylum seekers and campaign for a fair and just asylum system. Founded in 1990, we have since helped 30,000 people to get a fair hearing. In 2009 85% of our clients were granted leave to stay in the UK when decisions were made on their claims for protection.

Please support us

Your donation will safeguard our independence and enable us to stand up for fair asylum rights without fear or favour.

You can make a donation via our website:
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☐ I confirm that I am a UK taxpayer and that I pay as much income or capital gains tax as Asylum Aid will reclaim in the tax year. Please treat all donations I make or have made to Asylum Aid for the past four years as Gift Aid donations until further notice.

Please notify us if you are no longer eligible to Gift Aid your donations.

We will not sell or swap your personal details with any other organization. We would like to keep you informed about our work, campaigning and membership. If you do not wish to receive any information from Asylum Aid other than relating to your donation, please tick this box ☐

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Sort code: 08-02-28,
Account number: 65281262

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253-254 Upper Street,
London N1 1RU

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Asylum Aid
Protection from Persecution

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